

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE EVERGREEN ULTRA)
SHORT OPPORTUNITIES FUND) Civil Action No.
SECURITIES LITIGATION) 08-11064-NMG

**MOTION FOR APPROVAL OF
LEAD PLAINTIFFS' SUBSTITUTION OF CO-LEAD COUNSEL
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Lead Plaintiffs International Brotherhood of Electrical Workers Local 98, NECA Electrical Workers Joint Apprenticeship Training Trust Fund, First Agency Account LP, Bricklayers and Allied Graftworkers Local 1 of PA/DE Health and Welfare Fund, and Bricklayers Local 54 of Pennsylvania Supplemental Welfare Fund (collectively, “Lead Plaintiffs”), by and through the undersigned counsel, file this motion for approval of their substitution of Co-Lead Counsel for the putative class (“Class”), and in support of this motion respectfully state as follows:

INTRODUCTION

Pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v) Lead Plaintiffs respectively seek the Court's approval to substitute Evangelista & Associates, LLC for Page Perry LLC as Co-Lead Counsel to the Class in this matter.

The substitution of Evangelista & Associates will contribute to Lead Plaintiffs' ability to prosecute this action with the maximum degree of continuity on behalf of the Class, help Lead Plaintiffs protect the interests of Class members, and help Lead Plaintiffs fulfill their obligations to the Class.

STATEMENT OF FACTS

On May 7, 2009 (Docket #33), Lead Plaintiffs were appointed as Lead Plaintiffs in this action pursuant to the Private Securities Litigation Reform Act ("PSLRA"), and their choice of counsel, the law firms of Robbins Geller Rudman & Dowd LLP (f/k/a Coughlin Stoia Geller Rudman & Robbins LLP), Page Perry LLC, and Cohen, Placitella & Roth, P.C., were appointed Co-Lead Counsel to the Class.

At all times since the inception of the litigation, James M. Evangelista and David J. Worley have been the attorneys at the Page Perry firm responsible for the investigation and prosecution of this litigation on behalf of Lead Plaintiffs. Effective March 15, 2010, Mr. Evangelista established a new law firm, Evangelista & Associates, LLC, where Mr. Worley also is "Of Counsel."

Page Perry consents to this substitution.

ARGUMENT

I. LEAD PLAINTIFFS HAVE THE POWER TO SELECT LEAD COUNSEL SUBJECT TO THE COURT'S APPROVAL

Pursuant to the PSLRA, Lead Plaintiffs have the continuing right to select, subject to Court approval, their choice of counsel to represent the Class. 15 U.S.C. § 78u-4(a)(3)(B)(v). *See In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 192 (3d Cir. 2005) (“*Cendant II*”) (“The PSLRA is explicit that the power to select counsel resides in the lead plaintiff.”); *In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002) (“Selecting a lawyer in whom a litigant has confidence is an important client prerogative and we will not lightly infer that Congress meant to take away this prerogative from securities plaintiffs. And, indeed, it did not. While the appointment of counsel is made subject to the approval of the court, the Reform Act clearly leaves the choice of class counsel in the hands of the lead plaintiff.”); *In re Cendant Corp. Sec. Litig.*, 264 F.3d 201, 273 (3d Cir. 2001) (“The only powers expressly given to the lead plaintiff . . . are to ‘select and retain’ counsel.”) (“*Cendant I*”). The Supreme Court has stated that, across all United States jurisdictions, “a client controls the significant decisions affecting the representation.” *See Chauffeurs, Teamsters & Helpers Local No. 391 v. Terry*, 494 U.S. 558, 568 (1990).

Lead Plaintiffs have selected Evangelista & Associates to serve as Co-Lead counsel to the Class. Lead Plaintiffs therefore seek the Court's approval of the substitution of Evangelista & Associates for the Page Perry firm as Co-Lead Counsel, which substitution is appropriate under the PSLRA. *See Cendant II* at 192.

II. EVANGELISTA & ASSOCIATES WILL ADEQUATELY PROTECT THE INTERESTS OF THE CLASS

Lead Plaintiffs' decision to substitute Evangelista & Associates as Co-Lead Counsel in this litigation is reasonable. Evangelista & Associates attorneys have substantial experience in the prosecution of shareholder and securities class actions. *See*, Exhibit A to Evangelista Declaration submitted herewith. The firm focuses its practice on high value, complex financial fraud, such as securities class action litigation. The firm's attorneys have substantial experience litigating PSLRA securities fraud class action matters around the United States and the firm employs a full-time forensic fraud and financial institution specialist.

Moreover, the Evangelista & Associates attorneys involved in this litigation since its inception have substantial experience litigating PSLRA securities fraud class actions. A list of cases in which the firm's attorneys managed or played major roles at their former firms, which firms acted as lead or co-lead counsel, is set forth in Exhibit A to the Evangelista Declaration.

Some of Evangelista & Associates' experience litigating other types of complex class litigation also is set forth in Exhibit A to the Evangelista Declaration.

Based on its attorneys' extensive experience prosecuting complex financial fraud, PSLRA securities fraud class actions, and other complex class litigation matters, Evangelista & Associates is well-qualified to serve as Co-Lead Counsel in this matter and will adequately protect the interests of Class members.

The substitution of Evangelista & Associates for Page Perry will not result in any additional expense to the Class as both attorneys who handled this matter at Page Perry have joined Evangelista & Associates and will continue to represent Lead Plaintiffs without any break in continuity or need to re-learn the file.

Finally, Page Perry has consented to its substitution by Evangelista & Associates as Co-Lead Counsel.

CONCLUSION

For the foregoing reasons, Lead Plaintiffs respectfully request that this Court grant their motion and issue an Order approving the substitution of Evangelista & Associates, LLC as Co-Lead Counsel for the firm of Page Perry LLC.

Dated: April 15, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing MOTION FOR APPROVAL OF LEAD PLAINTIFFS' SUBSTITUTION OF CO-LEAD COUNSEL, MEMORANDUM OF LAW, AND DECLARATION OF JAMES M. EVANGELISTA IN SUPPORT THEREOF with the Clerk of the United States District Court, District of Massachusetts, using the CM/ECF system, which will automatically serve the motion and notification of filing to the registered participants as identified on the Notice of Electronic Filing (NEF), and that paper copies will be sent to those indicated as non-registered participants.

Dated: April 15, 2010

/s/ Betsy Ehrenberg
Betsy Ehrenberg